

REMARKS

Claims 1 and 8 are pending in the above-referenced patent application and have been rejected by the Examiner under 35 U.S.C. §103. Claims 2-7 and 9-10 have been cancelled and claim 1 has been amended. Claims 1 and 8 remain for consideration. No new matter has been added.

The Examiner has rejected claims 1 and 8 under 35 U.S.C. §103(a) as allegedly being unpatentable over United States Patent No. 3,153,807 to Nyman (hereinafter the Nyman reference) in view of United States Design Patent No. D493,351 to Wegman (hereinafter the Wegman reference). These rejections are respectfully disagreed with, and are traversed below.

Regarding claim 1, the Examiner alleges that Nyman discloses all the limitations of claim 1 except for a T-shaped slot to allow attachment of a form board to the surface of the connecting members via a fastener installed in the form board. The Applicant disagrees with the Examiner's characterization of the Nyman reference.

However, without addressing the patentability of claim 1 as previously presented in view of the Nyman reference and merely to streamline prosecution of the present application, clarifying amendments have been made to claim 1. Support for the proposed amendments to claim 1 may be found in the original disclosure at least at paragraphs 0006 and 0014 and FIG. 3. Thus, no new matter is presented. The Nyman reference is merely seen to disclose a hinge intended for collapsible pallet racks of the type used when small parcels or unpacked articles are to be transported on loading pallets. Unlike Applicant's claim 1, Nyman is not seen to disclose, teach or suggest all of the limitations of claim 1. For example, claim 1, as now written, recites:

"1. An apparatus for making foundation walls having angled or arcuate contours comprising: first and second connecting members, each defining at least one joining portion, each of said first and second connecting members defining a channel for slidably receiving an end of a foundation form being couplable to an end of a foundation form so that when said forms are operably positioned adjacent to one another said joining portions defined by each of said connecting members interlock with one another; each of said first and second connecting members defining a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms, each of said T-shaped slots extending completely through at least one surface of said first and second connecting members; each joining portion defines a shaped passage extending therethrough, said shaped passage

being substantially coaxial with one another when said first and second connecting members are operably positioned; said shaped passage being positioned substantially between said foundation forms; an elongated coupling member defining an exterior shape complimentary to a shape defined by said shaped passages is slidably received in said shaped passages thereby rotatably and releasably joining said first and second connecting members and thereby said foundation forms together."

As an initial matter, the invention disclosed in the Nyman reference is directed to a hinge intended for collapsible pallet racks of the type used when small parcels or unpacked articles are to be transported on loading pallets. Such a hinge would not be applicable to use with foundation forms. These forms are typically massive and must withstand the rigors of harsh treatment and harsh weather. They also must hold up against the force of tons of concrete poured between the forms. Accordingly, a person skilled in the installation of foundations would not look to hinges used to make collapsible pallet racks for guidance. In fact, such a reference would in all likelihood be immediately dismissed as being too flimsy and ill-suited to the application of forming a concrete foundation.

Unlike the invention recited in claim 1 of the instant patent application, the Nyman reference does not disclose, *inter alia*, the shaped passage being positioned substantially between the foundation forms. Instead, the Nyman reference discloses socket portions 5 holding a pin 6 to form an offset hinge positioned outboard of the sidewalls 14. Moreover, as the Examiner admits, Nyman is not seen to disclose a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from the foundation forms. Instead, Nyman teaches away from slidably attaching the connecting members to the foundation forms, by disclosing rivets to connect the side walls 14 to the hinge. A rivet connotes a permanent, rather than a slidable connection as recited in claim 1. The Applicant therefore respectfully submits that the Nyman reference fails to disclose, teach or suggest the limitations of claim 1.

In the Office Action, the Examiner alleges that FIGS. 1 and 6 of the Wegman reference teach utilization of a T-shaped slot within a side surface of the connecting member to allow for maneuverable attachment of the connecting member to a board or panel. The Applicant disagrees with the Examiner's characterization of the Wegman reference.

Contrary to the Examiner's characterization, it is respectfully submitted that the Wegman reference is merely seen to disclose the ornamental design for a cabinet hinge. The invention

disclosed in the Wegman reference is directed to a cabinet hinge. Such a hinge would not be applicable to use with foundation forms. As mentioned above, these forms are typically massive and must withstand the rigors of harsh treatment and harsh weather. They also must hold up against the force of tons of concrete poured between the forms. Accordingly, a person skilled in the installation of foundations would not look to cabinet hinges for guidance. In fact, such a reference would in all likelihood be immediately dismissed as being too flimsy and ill-suited to the application of forming a concrete foundation.

In addition, unlike claim 1 of the present application, the Wegman reference does not disclose, teach or suggest, *inter alia*, each of said first and second connecting members defining a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms. Instead, the Wegman reference shows one connecting member with no a T-shaped slot whatsoever, rather than disclosing first and second connecting members defining a plurality of T-shaped slots, as recited in claim 1. Even if assuming, *arguendo*, that the Wegman teaches a T-shaped slot, Wegman does not teach a plurality of T-Shaped slots, as recited in claim 1. Furthermore, the Wegman reference discloses a plurality of holes with screws shown in phantom, which suggest that holes are preferred over T-shaped slots for securing the hinge to the cabinet. Use of holes precludes use of pre-installed fasteners as recited in claim 1. Use of a plurality of holes as disclosed in the Wegman reference, therefore teaches away from use of a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms, as recited in claim 1. The Applicant therefore respectfully submits that the Wegman reference fails to disclose, teach or suggest the limitations of claim 1.

Assuming, *arguendo*, that the proposed combination of the Nyman and Wegman references was proper, the invention recited in claim 1 of the present invention could still not be arrived at. For example, the Nyman reference is not seen to disclose, teach or suggest, *inter alia*, each of said first and second connecting members defining a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms. Furthermore, the Wegman reference does not disclose, teach or suggest, *inter alia*, each of said first and second connecting members defining a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms. Neither the Nyman nor

the Wegman reference individually or in combination, teaches all the recitations of claim 1. Consequently, because not all of the claim recitations are taught by the cited references, Applicant's claim 1 is necessarily non-obvious. Applicant, therefore, respectfully submits that claim 1 is allowable. Accordingly, Applicant respectfully requests that the rejections of claim 1 be reconsidered and withdrawn.

Claim 8 depends directly from claim 1. Because claim 1 is asserted to be non-obvious for the reasons presented above, and because the Wegman reference does not cure the deficiencies of the Nyman reference, defendant claim 8 is necessarily non-obvious. Applicant, therefore, respectfully submits that claim 8 is allowable. Accordingly, Applicant respectfully requests that the rejection of claim 8 be reconsidered and withdrawn.

In the Office Action, the Examiner rejects claims 1 and 8 under 35 U.S.C. §103(a) as allegedly being unpatentable over the United States Patent No. 3,825,220 to Schmaltz (hereinafter the Schmaltz reference) in view of the Wegman reference. These rejections are respectfully disagreed with, and are traversed below.

Regarding claim 1, the Examiner alleges that Schmaltz discloses all the limitations of claim 1 except for a T-shaped slot to allow attachment of a form board to the surface of the connecting members via a fastener installed in the form board.

The Schmaltz reference is merely seen to disclose a removable form for moulding concrete having mortice and tenon type joints permitting adjacent forms to be arranged in a selected one of a three-way relation, with locking bars to secure the joints having a cam lock to retain the locking bar in place. The joints provide a substantially impermeable pouring face, and the locking bar carries a protective loose piece to seal the cam lock against pouring splash. Unlike Applicant's claim 1, Schmaltz is not seen to disclose, teach or suggest all of the limitations of claim 1, as presented above. Unlike the invention recited in claim 1 of the instant patent application, the Schmaltz reference does not disclose, inter alia, an elongated coupling member defining an exterior shape complimentary to a shape defined by said shaped passages is slidably received in said shaped passages thereby rotatably and releasably joining said first and second connecting. Instead the Schmaltz reference at column 2 lines 39-43, discloses:

"A centrally located recess 15 receives a locking bar 25 in sliding locking relation, to secure the two halves 12, 14 of the joint in locked relation, both to preclude transverse withdrawal of the tenon 22 from the mortice 24 and to prevent selective rotation of the halves."

The Schmaltz reference further discloses the inability of the two halves 12, 14 to rotate at column 2 lines 46-49:

"When assembled as right angled configurations similar to locations a Z¹ of FIG.1, the abutting surfaces are changed, but the assured non-rotational relationship is similarly preserved."

Furthermore, as the Examiner admits, the Schmaltz reference fails to disclose T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms. The Applicant therefore respectfully submits that the Schmaltz reference fails to disclose, teach or suggest the limitations of claim 1

The deficiencies of the Wegman reference are discussed above.

Assuming, arguendo, that the proposed combination of the Schmaltz and Wegman references was proper, the invention recited in claim 1 of the present invention could still not be arrived at. For example the Schmaltz reference is not seen to disclose, teach or suggest, inter alia, an elongated coupling member defining an exterior shape complimentary to a shape defined by said shaped passages is slidably received in said shaped passages thereby rotatably and releasably joining said first and second connecting. As discussed above, the Wegman reference does not disclose, teach or suggest, inter alia, each of said first and second connecting members defining a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms. Neither the Schmaltz nor the Wegman reference individually or in combination, teaches all the recitations of claim 1. Consequently, because not all of the claim recitations are taught by the cited references, Applicant's claim 1 is necessarily non-obvious. Applicant, therefore, respectfully submits that claim 1 is allowable. Accordingly, Applicant respectfully requests that the rejections of claim 1 be reconsidered and withdrawn.

Claim 8 depends directly from claim 1. Because claim 1 is asserted to be non-obvious for the reasons presented above, and because the Wegman reference does not cure the deficiencies of the Schmaltz reference, dependant claim 8 is necessarily non-obvious. Applicant, therefore, respectfully submits that claim 8 is allowable. Accordingly, Applicant respectfully requests that the rejection of claim 8 be reconsidered and withdrawn.

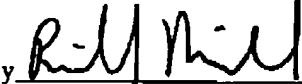
Applicant believes that the foregoing amendments and remarks are fully responsive to the Office Action and that the claims herein are allowable. In view of the foregoing points that distinguish Applicant's invention from those of the prior art and render Applicant's invention novel and non-obvious, Applicant respectfully requests that the Examiner reconsider the present application, remove the rejections, and allow the application to issue.

If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is invited to telephone the undersigned.

Based on the foregoing and for at least these reasons, Applicant respectfully submits that claims of the application in question are in condition for allowance and an early action to that effect is earnestly solicited.

No fee is believed due with the filing of this Amendment. However, if a fee is due, Applicant authorizes the payment of any additional charges that may be necessary to maintain the pendency of the present application to the undersigned attorney's Deposit Account No. 503342.

Respectfully submitted,

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